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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Sarah Winter,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-21-01828-PHX-JJT

ORDER

15 At issue is the denial of Plaintiff Sarah Jane Winter's Application for Disability
16 Insurance Benefits by the Social Security Administration under the Social Security Act.
17 Plaintiff filed a Complaint (Doc. 1) with this Court seeking judicial review of that denial,
18 and the Court now addresses Plaintiff's Opening Brief (Doc. 13, Pl. Br.), Defendant Social
19 Security Administration Commissioner's Response Brief (Doc. 14, Def. Br.), and
20 Plaintiff's Reply (Doc. 17, Reply). The Court has reviewed the briefs and Administrative
21 Record (Doc. 12, R.) and now reverses the Administrative Law Judge's (ALJ) decision (R.
22 at 17–32) as upheld by the Appeals Council (R. at 1–5).

23 **I. BACKGROUND**

24 Plaintiff filed an application for Disability Insurance Benefits on November 7, 2016,
25 for a period of disability beginning on December 11, 2015. (R. at 166.) Her claim was
26 denied initially on April 4, 2017, and upon reconsideration on August 3, 2017. (R. at 166.)
27 On May 21, 2019, Plaintiff appeared before the ALJ for a hearing regarding her claim.
28 (R. at 166.) On September 16, 2019, the ALJ denied Plaintiff's claim. (R. at 166–78.)

1 On July 1, 2020, the Appeals Council granted Plaintiff's Request for Review of the
2 ALJ's decision and remanded the case to the ALJ for resolution of several issues. (R. at
3 188–89.) Plaintiff appeared for a second hearing before the ALJ on February 10, 2021.
4 (R. at 17.) On March 31, 2021, the ALJ again denied Plaintiff's claim (R. at 17–32), and
5 on September 16, 2021, the Appeals Council denied Plaintiff's second Request for Review
6 of the ALJ's decision (R. at 1–5).

7 The Court has reviewed the record and will discuss the pertinent medical evidence
8 in addressing the issues raised by the parties. Upon considering the medical records and
9 opinions, the ALJ evaluated Plaintiff's disability based on the severe impairments of a
10 neurological disorder, history of migraine headaches, post-traumatic stress disorder,
11 degenerative disc disease, and hypothyroidism. (R. at 20.)

12 Ultimately, the ALJ evaluated the medical evidence and testimony and concluded
13 that Plaintiff is not disabled. (R. at 32.) In so doing, the ALJ determined that Plaintiff "does
14 not have an impairment or combination of impairments that meets or medically equals the
15 severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1."
16 (R. at 21.) The ALJ found that Plaintiff has the Residual Functional Capacity (RFC) to
17 perform light work with some physical and environmental limitations. (R. at 23.) The ALJ
18 concluded that Plaintiff cannot perform past relevant work as an executive assistant,
19 training analyst, or property appraiser, but could perform light work such as office helper
20 or sedentary work such as account clerk, such that Plaintiff is not under a disability as
21 defined in the Social Security Act. (R. at 30–31.)

22 **II. LEGAL STANDARD**

23 In determining whether to reverse an ALJ's decision, the district court reviews only
24 those issues raised by the party challenging the decision. *See Lewis v. Apfel*, 236 F.3d 503,
25 517 n.13 (9th Cir. 2001). The Court may set aside the Commissioner's disability
26 determination only if the determination is not supported by substantial evidence or is based
27 on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is
28 more than a scintilla, but less than a preponderance; it is relevant evidence that a reasonable

1 person might accept as adequate to support a conclusion considering the record as a whole.
2 *Id.*; see also *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019). To determine whether
3 substantial evidence supports a decision, the Court must consider the record as a whole and
4 may not affirm simply by isolating a “specific quantum of supporting evidence.” *Id.*
5 Generally, “[w]here the evidence is susceptible to more than one rational interpretation,
6 one of which supports the ALJ’s decision, the ALJ’s conclusion must be upheld.” *Thomas*
7 *v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002) (citations omitted).

8 To determine whether a claimant is disabled for purposes of the Act, the ALJ
9 follows a five-step process. 20 C.F.R. § 404.1520(a). The claimant bears the burden of
10 proof on the first four steps, but the burden shifts to the Commissioner at step five. *Tackett*
11 *v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). At the first step, the ALJ determines whether
12 the claimant is presently engaging in substantial gainful activity. 20 C.F.R.
13 § 404.1520(a)(4)(i). If so, the claimant is not disabled, and the inquiry ends. *Id.* At step
14 two, the ALJ determines whether the claimant has a “severe” medically determinable
15 physical or mental impairment. 20 C.F.R. § 404.1520(a)(4)(ii). If not, the claimant is not
16 disabled, and the inquiry ends. *Id.* At step three, the ALJ considers whether the claimant’s
17 impairment or combination of impairments meets or medically equals an impairment listed
18 in Appendix 1 to Subpart P of 20 C.F.R. Part 404. 20 C.F.R. § 404.1520(a)(4)(iii). If so,
19 the claimant is automatically found to be disabled. *Id.* If not, the ALJ proceeds to step four.
20 *Id.* At step four, the ALJ assesses the claimant’s residual functional capacity and
21 determines whether the claimant is still capable of performing past relevant work.
22 20 C.F.R. § 404.1520(a)(4)(iv). If so, the claimant is not disabled, and the inquiry ends. *Id.*
23 If not, the ALJ proceeds to the fifth and final step, where she determines whether the
24 claimant can perform any other work in the national economy based on the claimant’s RFC,
25 age, education, and work experience. 20 C.F.R. § 404.1520(a)(4)(v). If so, the claimant is
26 not disabled. *Id.* If not, the claimant is disabled. *Id.*

1 **III. ANALYSIS**

2 Plaintiff raises four arguments for the Court’s consideration, namely, (1) the ALJ’s
 3 reasons for discounting the opinions of Plaintiff’s treating and examining physicians were
 4 neither sufficient nor supported by substantial evidence in the record; (2) the ALJ erred in
 5 evaluating Plaintiff’s symptom testimony; (3) the ALJ erred in rejecting lay witness
 6 testimony without germane reasons to do so; and (4) the ALJ erred in relying on vocational
 7 expert testimony given in response to an incomplete hypothetical question. (Pl. Br. at 1–2.)

8 The Court’s resolution of this case begins and ends with Plaintiff’s first contention,
 9 that the ALJ’s reasons for discounting the opinions of Plaintiff’s treating and examining
 10 physicians were inadequate and unsupported by substantial evidence in the record. (Pl. Br.
 11 at 8–17.) In evaluating applications filed before March 27, 2017, as in Plaintiff’s case,
 12 “[t]he ALJ must consider all medical opinion evidence,” but there is a hierarchy among the
 13 sources of medical opinions. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008).
 14 Those who have treated a claimant are treating physicians, those who examined but did not
 15 treat the claimant are examining physicians, and those who neither examined nor treated the
 16 claimant are nonexamining physicians. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995).
 17 The ALJ may only reject a treating or examining physician’s contradicted medical opinion
 18 “for specific and legitimate reasons that are supported by substantial evidence in the
 19 record.” *Carmickle v. Comm’r of Soc. Sec.*, 533 F.3d 1155, 1164 (9th Cir. 2008). “The ALJ
 20 can meet this burden by setting out a detailed and thorough summary of the facts and
 21 conflicting clinical evidence, stating his interpretation thereof, and making findings.”
 22 *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). “Substantial evidence means
 23 more than a mere scintilla, but less than a preponderance.” *Andrews v. Shalala*, 53 F.3d
 24 1035, 1039 (9th Cir. 1995).

25 Kelly Milton, M.D., a neurologist, began treating Plaintiff in January 2016 for
 26 cognitive deficit, headaches, and seizure-like episodes including shaking at night. (R. at
 27 1700.) An MRI revealed an arachnoid cyst on Plaintiff’s brain, which may have contributed
 28 to Plaintiff’s seizures, though different symptoms led to the opinion that the cyst was not

1 the root cause of Plaintiff's episodes. (R. at 1700.) Medication for migraines and seizures
2 helped reduce the frequency of Plaintiff's episodes but did not eliminate them entirely.
3 (R. at 1700.)

4 In October 2018, based on her examination and treatment of Plaintiff over the course
5 of almost two years, Dr. Milton opined that Plaintiff had extreme limitations in the ability
6 "to understand and remember detailed instructions" and marked limitations in numerous
7 areas, including the ability "to remember locations and work-like procedures," "understand
8 and remember very short and [simple] instructions," "carry out very short and simple
9 instructions," "carry out detailed instructions," "maintain attention and concentration for
10 extended periods," "work in coordination with or proximity to others without being
11 distracted by them," and "make simple work-related decisions." (R. at 1698.)

12 In December 2018, Dr. Milton found it difficult to "definitively characterize"
13 patient's symptoms, opining that they could be "migraine aura," seizures, or
14 psychologically-based episodes potentially grounded in past severe trauma, but she noted
15 that Plaintiff was "hampered by headaches and cognitive decline." (R. at 1700.) Dr. Milton
16 observed that, in the exam room, Plaintiff "has stuttering speech that seems to wax and
17 wane," which further fueled Dr. Milton's opinion that the symptoms might be caused by
18 psychological as well as neurological factors. (R. at 1700.) Dr. Milton concluded, "We can
19 pontificate forever on what might be causing her ailments. Regardless of the cause, we
20 need to determine what she can, actually, do." (R. at 1700.)

21 The ALJ assigned Dr. Milton's opinions "little weight," because Dr. Milton relied
22 on Plaintiff's subjective reports of her symptoms and stated "it was nearly impossible to
23 prove whether or not the claimant could follow complex instructions during a regular office
24 visit," which the ALJ stated implied that "Dr. Milton does not believe there is any
25 significant limitation in the claimant's ability to perform simple tasks." (R. at 28.) Not only
26 are the ALJ's conclusions unsupported by substantial evidence in the record, but they are
27 contrary to it. Based on her course of examination and treatment of Plaintiff, Dr. Milton
28 explicitly stated that Plaintiff has marked limitations in remembering or carrying out simple

1 instructions. There was no need for the ALJ to infer what Dr. Milton meant about Plaintiff's
 2 ability to perform simple tasks when Dr. Milton explicitly opined on that ability based on
 3 her treatment of Plaintiff. And it is illogical to disregard Plaintiff's lack of capacity to
 4 perform simple tasks based on Dr. Milton's statement that assessing Plaintiff's capacity to
 5 perform complex tasks in an examination room was difficult.

6 The Court also finds the ALJ's statement that Dr. Milton's opinions were based
 7 solely on Plaintiff's subjective reports (R. at 28) to be unsupported by substantial evidence.
 8 As support, the ALJ stated that Dr. Milton's opinions were "inconsistent with her own
 9 treatment notes" (R. at 28), but the ALJ failed to demonstrate how. *See Magallanes*, 881
 10 F.2d at 751 (9th Cir. 1989) (noting "[t]he ALJ can meet [her] burden by setting out a
 11 detailed and thorough summary of the facts and conflicting clinical evidence, stating [her]
 12 interpretation thereof, and making findings"); *Padilla v. Comm'r. of Soc. Sec.*, No. CV-17-
 13 02737-PHX-BSB, 2018 WL 4770807 at *6 (D. Ariz. Oct. 3, 2018) (finding that "[e]ven if
 14 the record includes limited objective evidence and treatment evidence, the ALJ still failed
 15 to connect that evidence, or lack of evidence, to her rejection of any particular limitation
 16 that [the treating physician] identified"). Indeed, on a review of the record, the Court finds
 17 Dr. Milton's treatment notes to be consistent with her assessment of Plaintiff's
 18 psychological capacity.¹ And it is beyond dispute that psychological assessments by their
 19 very nature are based in part on subjective reports of symptoms.

20 Further, the ALJ noted that Plaintiff's symptoms "improved with medication" and
 21 that she had "high average intellectual functioning." (R. at 28.) These reasons are likewise
 22 unpersuasive. Dr. Milton accounted for Plaintiff's symptoms while on medication in
 23 assessing Plaintiff's capacity, and while the record shows medication helped reduce the
 24 frequency of Plaintiff's episodes, it did not resolve all of her psychological or cognitive
 25 limitations. Likewise, the fact that Plaintiff is intelligent does not negate the record of
 26 limitations she suffered on account of neurological/psychological disorders. Accordingly,

27 ¹ The ALJ also based her disregard of Dr. Milton's assessment on Dr. Milton's "refusal"
 28 to do a physical capacity assessment of Plaintiff. (R. at 28.) But this is entirely expected,
 as Dr. Milton is a neurologist by specialty and was treating Plaintiff for "cognitive deficit,
 headaches, and seizure-like episodes."

1 the Court agrees with Plaintiff that the ALJ's reasons for assigning "little weight" to
2 Dr. Milton's assessments of Plaintiff were neither legitimate nor supported by substantial
3 evidence, and the ALJ's error in accounting for Dr. Milton's opinions was material to the
4 formulation of Plaintiff's RFC and the ultimate disability determination.

5 On Dr. Milton's recommendation that Plaintiff receive further assessment and
6 testing with "fresh eyes" (R. at 1700), Dr. Brent Geary, a psychologist, examined Plaintiff
7 on April 22, 2019. (R. at 1746.) Dr. Geary opined that Plaintiff has certain symptoms that
8 are "neurological in nature, such as seizure disorder, daily headaches, severe migraine
9 episodes, and visual trouble. The underlying neurological dysfunction also clearly
10 contributes to cognitive impairment." (R. at 1746.) In testing, Dr. Geary found Plaintiff's
11 memory "slips precipitously . . . after short delays of 15–25 minutes." (R. at 1746–47.) He
12 also noted that Plaintiff's "psychomotor speed is notably weaker than other intellectual
13 faculties and information processing is impaired." (R. at 1747.) After his examination,
14 Dr. Geary opined that Plaintiff had moderately severe limitations in her ability to
15 "understand, remember, and carry out detailed instructions," "respond to customary work
16 pressures," and "complete a normal workday/week without interruptions from
17 psychologically based symptoms and to perform at a consistent basis without an
18 unreasonable length and number of rest periods." (R. at 1748–50.) Likewise, Dr. Geary
19 concluded Plaintiff had moderate limitations in her ability to "maintain attention and
20 concentration for extended periods" and other work-related cognitive functions. (R. at
21 1748–50.)

22 The ALJ assigned "little weight" to Dr. Geary's assessment, finding them
23 "inconsistent with the record as a whole" without further explanation or detail. (R. at 29.)
24 This, again, was error. *See Magallanes*, 881 F.2d at 751; *Padilla*, 2018 WL 4770807 at *6.
25 And the Court's review of the record shows that Dr. Geary's opinion was consistent with
26 the records of Plaintiff's treatment. (*E.g.*, R. at 1761–62.) The ALJ further took issue with
27 what she characterized as the inconsistency between these assessments of Plaintiff's
28 cognitive abilities and Plaintiff's international travel, but the record shows that Plaintiff

1 was accompanied on all her travel and did not operate independently. (R. at 64–67.) In
2 sum, the Court finds that the ALJ also materially erred in weighing Dr. Geary’s
3 examination and evaluation of Plaintiff’s cognitive capacity by failing to provide legitimate
4 reasons for discounting it or supporting any reason with substantial evidence in the record.

5 In the absence of any specific and legitimate reasons to discount the opinions of
6 Dr. Milton and Dr. Geary, the Court must credit them as a matter of law. *See Lester*, 81 F.3d
7 at 834. And in addressing the hypotheticals incorporating the limitations put forth by these
8 doctors, the vocational expert testified that Plaintiff could not work in the national
9 economy. (R. at 114–15.)

10 Because this error is dispositive, the Court need not examine Plaintiff’s other
11 arguments. Briefly, the Court notes that it would also find that the ALJ erred by failing to
12 give specific, clear and convincing reasons for discounting Plaintiff’s symptom testimony,
13 for many of the same reasons as the Court discussed above.

14 The “credit-as-true” standard, if applied, results in a remand of Plaintiff’s case for
15 a calculation and payment of benefits. *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir.
16 2014). It applies if each part of a three-part standard is satisfied. *Id.* First, the record must
17 have been fully developed and further administrative proceedings would serve no useful
18 purpose. *Id.* Next, the ALJ must have failed to provide sufficient reasons for rejecting
19 claimant’s testimony or medical opinions. *Id.* Finally, if the improperly discredited
20 evidence were credited as true, then the ALJ would be required to find the claimant
21 disabled. *Id.*

22 The credit-as-true rule applies in this case. First, the record in this case was fully
23 and extensively developed, such that further proceedings would be unproductive. Next, as
24 discussed above, the ALJ failed to provide legally sufficient reasons for rejecting the
25 medical opinions of Dr. Milton and Dr. Geary. The ALJ also failed to properly weigh the
26 Plaintiff’s symptom testimony. Finally, if the improperly discredited evidence were
27 credited as true, then the ALJ would be required to find that Plaintiff is disabled. The ALJ
28 improperly discredited two treating and examining physicians’ opinions that Plaintiff has

1 marked to extreme limitations in several areas of cognitive functioning. The ALJ also
2 discredited Plaintiff's testimony regarding the severity of her symptoms and their effects
3 on her abilities to sustain work. If this evidence is properly credited, then considering the
4 whole record, including the testimony of the Vocational Expert, the ALJ would be required
5 to find that Plaintiff is disabled. (R. at 114–15.)

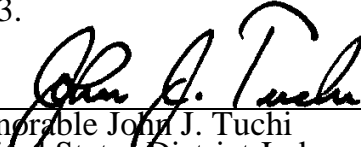
6 Therefore, it is unnecessary to remand for further administrative proceedings, and
7 the Court will remand for a calculation and entry of benefits.

8 **IT IS THEREFORE ORDERED** reversing the March 31, 2021 decision of the
9 Administrative Law Judge, (R. at 17–32), as upheld by the Appeals Council on
10 September 16, 2021 (R. at 1–5).

11 **IT IS FURTHER ORDERED** remanding this case to the Social Security
12 Administration for a calculation of benefits.

13 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter final judgment
14 consistent with this Order and close this case.

15 Dated this 30th day of March, 2023.

16 
17 Honorable John J. Tuchi
18 United States District Judge
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